IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.121 OF 2007

Sau Sandhya Subhash Karkhanis ...Petitioner
Versus
Subhada Jaisingh Kubal & Ors. ...Respondents

Shri A.V.Chatuphale for the Petitioner.
Shri S.R.Bhalekar for the Respondent Nos.1 to 4.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 21, 2007.

P.C.:

1. Heard learned Advocate appearing for the Petitioner. There is a decree for possession passed under section 13(1)(k) of the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act, 1947 passed against the Petitioner. The Petitioner is the original second Defendant. The suit relates to a residential premises. The suit was filed in March 1998. In the suit a specific allegation was made that the suit premises were not being used by the Defendants without reasonable cause for the purpose for which the said premises were let out for a continuous period of six months immediately preceding the date of institution of the suit. It is stated that on account of non user, the suit premises have become a breeding ground for reptiles, a home for pigeons and insects. The courts below have passed decree on the ground of non user.

2. The submission of the learned Advocate for the

Petitioner is that under the provisions of the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 the Petitioner was falsely implicated and the suit premises was attached. He submitted that in view of the attachment which is subsisting even as of today, the Petitioner was prevented from residing in the suit premises. He invited my attention to the order made by the Apex Court which records that the attachments made under the said Act of 1999 will continue till the disposal of the Special Leave Petition before the Supreme Court. He invited my attention to the report of the Court Commissioner and cross-examination of the Court Commissioner and submitted that the report is inconsistent and the commission work has been done without following the requisite procedure. He submitted that Commissioner's report cannot be relied upon.

3. It is not in dispute that the suit has been filed in March 1998. Even according to the case made out by the learned counsel for the Petitioner, the suit premises was sealed under the provisions of the said Act of 1999. The said Act of 1999 was brought on the statute book on 29th April, 1999 i.e after period of one year from the date of institution of the suit. For applicability of section 13(1)(k), the relevant period is the period of six months immediately preceding the date of institution of the suit.

4. It will be necessary to refer to the report of the Commissioner. The report gives the complete picture as regards state of affairs in the suit premises as on 09th March, 1998. The Commissioner noticed that there were no lights in the suit premises as electricity supply was not there. The report of the Commissioner indicates that there were no signs of any use of the suit flat for the purpose of residence. In the kitchen he noticed the presence of white ants. White ants were also found on the walls of the passage and on the top of the bathroom. There is other evidence on record in the form of the evidence of Dr.D.S.Kanekar who deposed in the year 2005 that a foul smell has been emanating from the suit premises for last ten years. The courts below have also referred to the examination-in-chief of the Petitioner. In the examination-in-chief, the Petitioner has stated that often there would be no cooking done in the suit premises. There is hardly any evidence led by the Petitioner to show that the suit premises was regularly used during the six months preceding the date of the institution of the suit. Considering the evidence on record, both the courts below have found that non-user for the relevant period of six months was established. The alleged reasonable cause for non-user which was sought to be pleaded by the Petitioner was the action of attachment under the said Act of 1999. The said action was initiated long after the filing of the suit. Therefore, there is no merit in the said plea.

There are concurrent findings of fact recorded by the courts below on the basis of appreciation of the evidence on record.

5. A submission was made by the learned counsel for the Petitioner that the suit premises are sealed even as of today. However, that will not affect the merits of the case of the Respondents-landlords and it is for the concerned Respondents to take steps for removal of the seal and attachment. There is no ground to interfere with the concurrent decrees passed by the courts below. Hence, revision Application is rejected.

JUDGE